

OPENING STATEMENT ON BEHALF OF
KAYA, OKINORI

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OPENING STATEMENT OF KAYA, OKINORI

In this brief opening statement of the defendant Kaya it is necessary to preface what we have to say by pointing out that not only is there a paucity of evidence against him to sustain the charges of the Prosecution under the Indictment; but except for the fact as has been shown, that he held conventional administrative offices during the Konoye and Tojo Cabinets, and performed his duties in a conventional and routine manner, there is nothing in the record to sustain the charges against him. The evidence will show that he entered the Finance Ministry as a young man out of college through competitive civil service examination, and that his entire career was spent in that department of the Government, with the exception of his service as President of the North China Development Company, which may said to have been kindred to his work in the Finance Ministry. We believe we are sustained in this statement by the tenuous argument of the Prosecution made on this defendant's motion for dismissal. Without apology, we nevertheless feel that we must meet the issues raised by the Prosecution in a negative way.

In GROUP ONE: CRIMES AGAINST PEACE of the Indictment, the defendant Kaya is charged with all the Counts except those concerning initiation and prosecution of a war of aggression against French Indo-China and Soviet Russia, and the initiation of the Manchurian Incident. The evidence will show that the first position that this accused held, although it cannot be said of any power, was when he became Vice-Minister of Finance in February 1937, followed by his short tenure as Minister of Finance in June 1937, which continued only until May 1938, a period of less than a year, and his evidence will indicate that he conducted his office as an office of state; and that he did not participate in a conspiracy as charged, and had no connection with one whatever. It is, of course, contended that no con-

spiracy existed, but if there was one, the evidence will indicate that he was not a party to it. The Prosecution has not tendered any evidence against the defendant Kaya in connection with the attacks against Soviet Russia or French Indo-China nor in connection with the Manchurian Incident. In his personnel record it stated that he was an official of the Finance Ministry but he was out of the Government about a year before the border disputes with Soviet Russia took place as claimed by the Prosecution, and it was about two years after he resigned from the Government that the French Indo-China development took place. When the Tri-Partite Pact was signed he was not a member of the Government and there is of course no evidence to indicate any connection on his part in either the negotiation or the signing of the Pact. For some time prior and after the occurrence of the Manchurian Incident he was a minor official of the Finance Ministry. The evidence will show that when the matter of military budgets came before him for consideration, he exerted, within his limited powers, every effort to slash them and prevent them from increasing.

The Prosecution has charged that he was party to the planning of a huge-scale war of aggression but not only did he have nothing to do with it, (and there is no evidence to indicate that he did) but he knew nothing about the Five Year Plan for Ammunition Industries and Five Year Plan for Heavy Industries said to have been established in May and June of 1938. The Cabinet of which he was a member did not adopt such plans nor did he have anything to do with their adoption nor with putting them in effect.

The evidence will show that what the defendant did in office during the time he became Vice-Minister of Finance in February, 1937 up to the time he resigned as Finance Minister in May, 1938 was to establish measures to combat the turmoil

and uncertainty that were troubling the economy of the country before he assumed his post and which became aggravated on account of the China Incident. What steps he took towards controlled economy, he took because such steps he felt would tend to avoid war. But he did try to avoid radical changes. The prevailing tendency at that time was for a strong foreign policy, and at home the abolition of status quo in favor of radical changes. His moderate policy, therefore, was regarded in disfavor and for that reason he was asked to resign his post as Finance Minister. He resigned because of this difference in views.

The evidence will show that the defendant Kaya was President of the North China Development Company from August 1939 to October 1941. Mr. Kaya had nothing to do with the organization of this company nor with the enactment of the law which created it. He was appointed as its administrative head and acted in that capacity pursuant to law. It will be pointed out that the company was under the direct control of the Prime Minister and that the approval of the Prime Minister was required when either making or revising regulations, increasing capital and the carrying on of the functions of this company. The evidence will show that it was under the direction and supervision of the China Affairs Board and he was not permitted to act on his own initiative.

The evidence will show Mr. Kaya had a strong desire to avoid war long before he became a member of Tojo's Cabinet. He had no connection with the Imperial Conferences of July and September, 1941 nor did he know anything about these conferences. In October, 1941, when Tojo requested him to become the Finance Minister, he did so only after receiving the assurance from Tojo that the new Cabinet would endeavor to maintain peace and would adopt policies to that end.

After joining the Cabinet, the defendant Kaya worked toward the amicable settlement of the Japanese-American negotiations. He endeavored to prevent war even if the negotiations were not successful. However, the conditions at the time were beyond his power to prevent war. Dissatisfied as he was with the outcome, he did not resign from his post because he could not do so as a loyal citizen of the country. However, he assented to the decision for war because he clearly recognized that the war was inevitable.

Under GROUP TWO of the Indictment, MURDER, the defendant Kaya is charged with Counts 37 to 47. The evidence will show that Mr. Kaya did not plan a war of aggression nor knowingly agreed to it. He was not a party to any plan to open hostilities without first giving notice, nor did he give silent approval to such a plan. He was not a party to any plan to wage battles in breach of laws or land warfare, nor did he give his consent nor silent approval to such acts. The record is replete that the Supreme Command was independent of the Cabinet and therefore a civilian Cabinet officer could have no responsibility in relation to the waging of war. Civilian members of the Cabinet had no voice in war operations. The attacks on Hankow and Canton took place long after he resigned his post as Finance Minister.

As to GROUP THREE: CONVENTIONAL WAR CRIMES AND CRIMES AGAINST HUMANITY, the defendant is charged with all three counts. However, the treatment of prisoners of war was a matter outside his jurisdiction. He was not informed nor consulted on the matter of illegal treatment of prisoners of war and it was a matter with which he was charged with no responsibility and in the nature of negative presentation we state the Prosecution did not directly or indirectly offer evidence to indicate any responsibility on the part of Mr. Kaya in relation to these counts in the Indictment.

In relation to the matter of military currency concerning which the Prosecution has offered evidence, it appears that in January 1941 the order for the preparation of military currency by the Japanese Army was made on the Finance Ministry at a time when Mr. Kaya was not the Finance Minister and the only evidence offered by the Prosecution is to charge Mr. Kaya with responsibility of establishing the procedure of handling military currency at a time when war seemed imminent but this procedure was already in preparation at the time Mr. Kaya assumed office and it was merely a routine administrative matter.

In fine, the evidence to be offered by the accused will show that he is a career public servant; that such duties and functions he performed were either as a member of the Cabinet or in an administrative capacity and not otherwise all of which were performed as a state official essential in carrying out the functions of government.

辯護側書頭第二六六〇號

賀屋興宜書頭陳述

簡潔に被告賀屋の冒頭陳述を行ふに當りまして我々は最初に左の事柄を指摘する事を必要と思ふものであります。即ち賀屋に關しては、檢察側が起訴狀の中に提起してゐる。告訴を裏づける證據の缺如してをることであります。又それのみでなく、之までに知られたる事實、即、賀屋が近衛及東條兩内閣に在つては典型的役人として國家的に型通りの任務を遂行したといふ事實を除いては、彼に對して爲されてゐる告訴を支持する記述は何も無いといふ事であり、賀屋は大學出身の若年にして競争烈しい文官試験を通過し大藏省に入つたのでありまして爾來ずつと大藏省で一生を過して來た人であり、たとへば例外的に彼が從事してゐた大藏省での仕事に關係の深かつた北支開發會社の社長をした事があるに過ぎないのであります。之等の事實は證據によつて明かにされるでありませう。同被告起訴狀却下申立に對し、檢察側が微且つ細にわたる辯論を爲したのであります。我々はこの辯論によつて、すでにこの點に關する我々の陳述は支持せられてゐると信ずるのであります。が然し辯論をぬきにして、我々は檢察側の提起した點に對し之を否定するものであります。起訴狀の第一類、「平和に對する罪」の中に於て、賀屋は、佛印及びソビエトに對する侵略戦争の立案並に実行及び滿洲事變の立案に關する訴因以外の

全部の経因に於て告訴されてゐます。同被告は、最初、一九三七年二月、大蔵次官に就任しましたが之は有力な地位とは云へないものでありました。彼は次いで一九三七年六月から一九三八年三月まで大蔵大臣をしましたが之は極めて短期間で一年に滿たなかつたのであります。又彼は自分の所轄に属する大蔵省を國家の役所として指導したのであると、更に彼が起訴せられたる如き共同謀議には干渉しなかつた事、及びどの共同謀議にも關しなかつたこと等を證據によつて示すでありませう。勿論、共同謀議といふものは行はれなかつたと議論されてゐるのであります。あつたとしても、被告實業は何等之に關與しなかつたのである事が證據によつて明かになるでありませう。

對ソ攻撃、對佛印攻撃及び滿洲事變等に關して被告實業に關する反證は未だ檢察官から提出がありません。實業の經歷中には彼が大蔵省官吏であつたことは述べてありますが、對ソ國境紛争勃發までの一ケ年間は彼は、檢察官の主張とは異つて、政府部内の人ではなく、又佛印問題も彼が官職を辞めて後約二ケ年になつてから起つた出來事でありました。三國協定調印の頃には彼は政府部内の一員でなく、從つて彼が協定の交渉乃至調印の何れかに關係があつたといふ事實を示す證據は勿論ありません。滿洲事變の起つた前後の或る期間を通じて大蔵省の一小官として勤務致しました。軍事豫算問題が彼の考慮のために提出されました時、彼は自分の

限られたる期限内において、全力を盡してこの事業の削減に努め、その増大を阻止せんと致しました、この事は記録に示されています。

檢察官は、實は大規模の侵略計畫の一當事者であると申されましたが、彼はこれには無関係でありました（且つ彼がこれに關係があつたことを示す證據もありません）。彼は上記の計畫に關係がなかつたのみならず昭和十三年五月と六月に設定されたと稱せらるる軍事工業五年計畫と重工業三年計畫につきましても彼は何等通知する所はなかつたのであります。

彼がその一員をなしていた内閣はこれ等の計畫を採用しませんでした。それで彼もこれが採用にも又實施にも關係がなかつたのであります。

被告が昭和十二年二月大蔵次官たりし時から昭和十三年五月大蔵大臣を辭した時までの期間において彼が官吏として行つたことは、彼の就任前日本の經濟を苦しめ、支那事變のために悪化して來た國內の動搖不安抑制の爲めの施策を樹立することでありました。

彼が採つた統制經濟上の手段は皆、新かるものは競争回避に役立つものであり、うと思つたから行つたのであります。然し彼は極端なる變革を避けようと努めました。當時の大勢は對外強硬政策に向つて居り、國內では極端なる變革に資する様現状打撃を歓迎してゐました。だから彼の穩健なる政策は人氣なく、その爲めに彼は大蔵大臣たる地位を著める様要求されました。彼はこの見解の相違から辭職したのであります。

登録の示す所によると、被告賀屋は、一千九百廿九年八月から一千九百四十一年十月迄北支開發會社の總裁でありました。賀屋氏はこの會社の設立に何等關係せず、又之の創立に關する法律の實施にも干與しませんでした。彼はこの會社の經營上の首長として任命せられ、法律に基く資格で行動して居ました。この會社が總理大臣の直轄下にあつて、規定を設けたり或は更改し、資本を増額し、又は會社の職務を營む場合には、總理大臣の認可を要した事は指摘されます。登録の示す所によると、會社は對支事務局の管轄下にあつて、彼自らの發意に基いて行動するを許されませんでした。

賀屋氏は、東條内閣の關係に成るより遙か前から戦争の同僚も痛烈に希求して居りました。彼は一千九百四十一年七月及び九月の御前會議に關係せず、尙この會議に就て何事も知らなかつた。一千九百四十一年十月東條が彼に大藏大臣たらん事を附ふた時、彼は新内閣が平和を維持するに努め、抑進策の目的に叶ふ政策を採るといふ保證を東條から得てはじめて就任を承諾したのであります。

被告賀屋は内閣員となつた後、日米交渉の和解に努めました。彼は假令交渉が成功しなくても、戦争は之れを回避することに努力しました。併し戦争を防止せんとしても、當時の状況は彼の力を以て如何ともするところが出来ませんでした。かゝる結果に彼は不満足でありましたが彼は辭職しませんでした、その故は彼は國家の忠良な氏として辭職出来なかつたのでありました、彼は戦争の避け難いことを明かに認識しましたから、開戦の決議に賛成しました。

起訴狀第二類一殺人に於て被告賀屋は訴因三七一四七により罪を問はれていますが、これについては賀屋氏が侵略戦争を計畫せず或はそれと知りながらこれに同意しなかつたことを證據によつて示します、彼は最初に通告を發せずして開戦する如何なる計畫にも參與しませんでした。又かゝる計畫を承認したこともありませんでした。彼は法律に違背した戦闘又は陸戦を任掛けようとする如何なる計畫にも參與しませんでした。又彼はかゝる行動に同意又は承認を與へたこともありませんでした、最高司令官は内閣より獨立していますから文官内閣員は開戦に對して責任なきことを示す記録は多分に開つています、内閣の文官は作戰に對して發言權はありませんでした、澳口及廣東に對する攻撃は彼が大藏大臣の職を辭してから長い間の後に起りました。

第三類一通例の戦争犯罪及人道に對する罪一については被告は三訴因全

部により罪を問はれてゐます。併し件廢の取扱は彼の管轄外に屬する事項でありました。彼は件廢の不法取扱の件につき通知も受けず又相談も受けませんでした。それは彼が責任を負はされてゐない事項でありました、そして性質上消極的陳述ではあります、私共は檢察側が直接にも間接にも賀屋氏が起訴狀に於ける、これらの訴因に關聯し、如何なる責任もあることを示す證據を提出してゐないことを述べて置きます。

檢察團が證據として提出した軍用通貨の件に關しては昭和十六年一月、賀屋氏が大藏大臣でなかつた當時、日本陸軍から其軍用貨準備の命令が大藏省に向つて出されて居つた事が明かであり、檢察團が提出した證據は戦争が急迫した當時軍用通貨の取扱手順制定に關する責任を糾弾して居るだけであり、然し此手續は既に賀屋氏が就任した時は準備が出来て居り、且に常例的の行政事務手續だけでありました。

要するに被告の提出する證據は彼が職務的に公僕であつた事を證明致し、即ち彼が勤めた職務及び職能は一閣僚としてあるか又行政上職務の範圍内でやつた事の何れかであつて政治機能、運営に對して必要決くべからざる國務官吏として執行する總ての任務機能ではなかつたのであります。

頁 行	一 〇 九	一 五 四	三 〇 五
誤	彼が従事してゐた大蔵省での仕事に關係の深かつた、	彼が採つた統制經濟上の手段は實斯るものは戦争回避に役立つてゐると思つたから行つたのであります	賀澤氏はこの會社の設立に何等關係せず、又之の創立に關する法律の實施にも干與しませんでしたこの會社が總理大臣の直轄下にあつて
訂 正	創 除	創 除	創 除

辯護書類第二六六〇號

賀澤興宣冒頭陳述

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